



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,161	12/21/2001	Clayton L. Robinson	Z1154/02118	8175

22884 7590 04/22/2004

MIDDLETON & REUTLINGER  
2500 BROWN & WILLIAMSON TOWER  
LOUISVILLE, KY 40202

EXAMINER
----------

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
----------	--------------

3727

66

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/026,161

Applicant(s)

ROBINSON ET AL

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-9, 11-21 and 23-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 11-21 and 23-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Art Unit: 3727

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on January 15, 2004 has been entered.

***Specification***

2. The abstract of the disclosure is objected to because it contains "means". Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 2, 3, 5-8, 23-26, 28-30, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zumbuhl (US 5,992,661) in view of Wetten et al. (US 6,235,822) and Gutmann (US 1,916,977).

Zumbuhl teaches the claimed closure and container except for a seal on the container opening and is silent regarding the action of the sealing gasket **19**.

Gutmann teaches it is known to provide a cap having a gasket to a container having a seal over the opening thereof.

Wetten teaches it is known to provide a closure liner for hot-filling a container, that the liner material is inherently known to compress and recover during at high temperature and/or high pressure because of its thermoplastic elastomeric material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a liner material capable of compressing and recovering as a result of high temperature and/or high pressure in the associated container, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the

Art Unit: 3727

intended use as a matter of obvious design choice and to apply the closure to a container having a seal over the opening. Doing so maintains a complete sealing engagement between the closure and the container until desired removal of the closure seal from the container.

Regarding claims 2 and 29, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the liner material with a melting point greater than 265° F and a shore A hardness of 70, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 8 and 35, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a tamper-evident band having a plurality of resilient fingers since the examiner takes Official Notice of the equivalence of a continuous bead and a plurality of resilient fingers for their use in the closure art and the selection of any of these known equivalents to secure a tamper-evident band to a container collar would be within the level of ordinary skill in the art.

5. Claims 4 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 26 and 28 above, and further in view of Carr et al. (US 4,625,875).

Zumbuhl as modified teaches the claimed closure except for a sealing layer between the liner and the interior cap surface.

Carr teaches it is known to provide a sealing layer between the liner and the interior cap surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a sealing layer between the liner and the interior cap surface. Doing so ensures contact between the liner and the interior cap surface particularly when the liner is preformed and applied to the cap in a separate step.

6. Claims 9 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 26 and 28 above, and further in view of Kelly (US 6,202,871).

Zumbuhl as modified teaches the claimed closure except for at least one slit extending from the top along the skirt.

Kelly teaches it is known to provide a closure skirt with at least one slit.

Art Unit: 3727

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one slit along the cap skirt. Doing so allows venting of the container to occur during initial removal of the closure.

7. Claims 11-18, 20, 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Wetten.

Carr teaches container and closure wherein the closure has gasket 62 and a tamper-evident band 16 having a continuous bead formed under a groove 42 and a seal 64 attached to the lip of the container opening. The screw threads are seen in figures 2-4 to having an upper edge angle less than about 45°. Carr does not teach the liner is of a material for retort processing.

Wetten teaches it is known to provide a closure liner for hot-filling a container, that the liner material is inherently known to compress and recover during at high temperature and/or high pressure because of its thermoplastic elastomeric material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a liner material capable of compressing and recovering as a result of high temperature and/or high pressure in the associated container. Doing so allows for complete sealing engagement between the closure and the container until desired removal of the closure from the container.

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 18 above, and further in view of Zumbuhl.

Carr as modified teaches the claimed closure except for resilient fingers on the band.

Zumbuhl teaches a tamper-evident band having a plurality of resilient fingers thereon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient fingers to the tamper-evident band of Carr. Doing so provides more flexure as the closure is pressed upon the container and the band slips over the collar.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 27 above, and further in view of Kelly.

Art Unit: 3727

Carr as modified teaches the claimed closure except for at least one slit extending from the top along the skirt.

Kelly teaches it is known to provide a closure skirt with at least one slit.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one slit along the cap skirt. Doing so allows venting of the container to occur during initial removal of the closure.

### ***Response to Arguments***

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's arguments filed January 15, 2004 have been fully considered but they are not persuasive. Regarding the combination of Carr and Wetten, the claimed container and closure combination is met by the combination since Carr teaches a closure having gasket **62** and a seal **64** attached to the lip of the container opening.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ullman et al. teaches a container and closure of interest.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

Art Unit: 3727

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

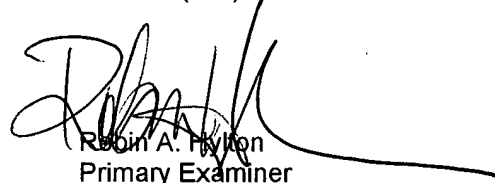
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
April 14, 2004

  
Robin A. Hylton  
Primary Examiner  
GAU 3727